

**STATE OF NORTH DAKOTA**  
**BEFORE THE INSURANCE COMMISSIONER**

<b>In the Matter of the Amendment</b>	)	<b>REGULATORY ANALYSIS,</b>
<b>Of Rules Regarding:</b>	)	<b>SMALL ENTITY ECONOMIC</b>
<b>Medicare Supplement Insurance</b>	)	<b>IMPACT STATEMENT, AND</b>
<b>Minimum Standards, North</b>	)	<b>SMALL ENTITY REGULATORY</b>
<b>Dakota Administrative Code</b>	)	<b>ANALYSIS</b>
<b>Chapter 45-06-01.1</b>	)	
	)	<b>FILE NO. RU-08-228</b>

**I. REGULATORY ANALYSIS**

The North Dakota Insurance Department issues this regulatory analysis as required by N.D.C.C. § 28-32-08. An agency must issue a regulatory analysis if a written request for an analysis is filed by the Governor or a member of the Legislative Assembly or a proposed rule being adopted by the agency is expected to have an impact on the regulated community in excess of \$50,000. *Id.*

The proposed rules are expected to have an impact on the regulated community in excess of \$50,000.

**A. The Classes of Persons Who Probably Will Be Affected by the Proposed Rules**

The class of persons who will probably be affected by the proposed rules are insurance companies that sell Medicare Supplement policies and the consumers that buy them. Each of these classes potentially bears the burden and the benefit of these proposed rules.

**B. A Description of the Probable Impact Including the Economic Impact of the Proposed Rules**

Currently there are 17 different standardized Medicare Supplement plans in force. Certain plans were eliminated by the federal law known as the Medicare Improvements for Patients and Providers Act of 2008 (Public Law No. 110-175). Two new plans were also created to give Medicare beneficiaries new options for higher cost-sharing with a lower premium. States rules governing Medicare Supplement policies are based on a model regulation adopted by the National Association of Insurance Commissioners (NAIC). The proposed amendments are also based on NAIC revisions to the model regulation. States must adopt the NAIC model revisions in order to

continue to regulate the Medicare Supplement (also known as "Medigap") market. As a result, consumers will have more choice in the Medicare Supplement policies available to them and they could save money. Insurers will have new products to market and they will no longer be able to market some older products as required by the federal law noted above.

**C. The Probable Costs to the Agency of Implementation and Enforcement of the Proposed Rule and Any Anticipated Effect on State Revenues**

The probable cost to the agency of implementation and enforcement of these rules will be minimal. Companies that sell Medicare Supplement insurance are already required to conform to existing rules. The amendments to the rules will represent a change in the types of Medicare supplements that may be sold by insurers.

**D. A Description of Any Alternative Methods for Achieving the Purpose of the Proposed Rules That Were Seriously Considered by the Agency and the Reasons Why the Methods Were Rejected in Favor of the Proposed Rules**

The Insurance Commissioner considered continuing to enforce the Medicare Supplement rules that are currently in effect. The current rules, however, would not comply with the federal law known as the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), Public Law No. 110-175, or the Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law No. 110-233. This standard was rejected because it would not acknowledge the changes made by these federal laws to the Medicare Supplement insurance business as described above.

**II. SMALL ENTITY ANALYSES**

N.D.C.C. § 28-32-08.1 requires that an agency prepare a regulatory analysis and an economic impact statement of the impact of the rule changes on a small entity. "Small entity" is defined by state law to include small businesses, small organizations, and small political subdivisions. *Id.* "Small business" is defined to mean a business entity, including its affiliates, which is independently owned and operated and employs fewer than 25 full-time employees; or has gross annual sales of less than \$2,500,000. *Id.* "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. *Id.* "Small political subdivision" means a political subdivision with a population of less than 5,000. *Id.*

**A. Small Entity Economic Impact Statement**

**1. Small entities subject to the proposed rule**

The small entities that may possibly be subject to these proposed rules are insurers and insurance producers that meet the statutory definition of "small entity".

2. Administrative and other costs required for compliance with the proposed rule

The administrative and other costs required for compliance with the proposed rules are expected to be minimal. The rules will require compliance with those standards already required by federal laws.

3. Probable cost and benefit to private persons and consumers who are affected by the proposed rule

There could be some cost to private persons and consumers since the proposed rules affect the kinds of Medicare Supplement policies that may be offered to the public. The probable benefits to private persons and consumers include furthering consumer choice by offering new Medicare Supplement products that could save some consumers money by lowering their premiums.

4. Probable effect of the proposed rule on state revenues

There is expected to be no effect on state revenues from the proposed rules.

5. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule

The Commissioner considered whether there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules. In those instances where alternative methods of achieving the purpose of the proposed rule were available, the alternatives were not selected because of the potential costs associated with them or because they were not equally effective in assuring that companies that sell Medicare Supplement insurance policies are complying with the federal laws noted above.

**B. Small Entity Regulatory Analysis**

1. Establishment of less stringent compliance or reporting requirements for small entities

Less stringent reporting requirements for small entities were considered. The proposed rules do not, however, impose any new reporting requirements. Less stringent compliance requirements were also considered but they were not appropriate to achieve the goal of assuring insurance company compliance with federal laws governing Medicare Supplement policies.

2. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities

The Commissioner considered less stringent schedules or deadlines where possible. States must, however, conform their statutes or regulations to the NAIC

model law revisions for GINA requirements by July 1, 2009, and for MIPAA requirements by September 24, 2009.

3. Consolidation or simplification of compliance or reporting requirements for small entities

To the extent possible, compliance or reporting requirements for small entities were simplified or made less onerous or made as streamlined as possible. The federal laws noted above (GINA and MIPPA) established the dates by which the Medicare Supplement changes go into effect. These delayed effective dates give Medicare Supplement issuers time to file and get their 2010 Medicare Supplement policy forms and rates filed and approved by their state insurance regulators.

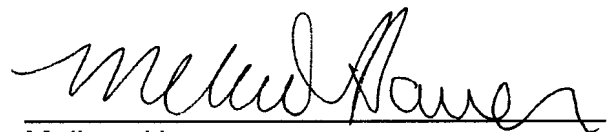
4. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule

Small entities were not given different standards to comply with than large entities. All companies selling Medicare Supplement policies, regardless of size, will be required to comply with the proposed rules.

5. Exemption of small entities from all or any part of the requirements contained in the proposed rule

Small entities were not given different standards to comply with than large entities.

DATED this 12 day of February, 2009.



Melissa Hauer  
Special Assistant Attorney General  
General Counsel  
N.D. Insurance Department  
600 East Boulevard Avenue, Dept. 401  
Bismarck, ND 58505  
(701) 328-2440